

EXHIBIT 11

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

10 Cr. 228 (LTS)

5 DAVID KUGEL,

6 Defendant.

7 -----x

8 New York, N.Y.
9 November 21, 2011
12:45 p.m.

10 Before:

11 HON. LAURA TAYLOR SWAIN,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA
16 United States Attorney for the
Southern District of New York

JULIAN MOORE

17 LISA A. BARONI

MATTHEW SCHWARTZ

18 Assistant United States Attorneys

19 MARTIN ADELMAN

DANIEL ZELENKO

20 MICHAEL BLUMENTHAL

Attorneys for Defendant

21
22 ALSO PRESENT: GREG HAGARTY, FBI

PAUL TAKLA, FBI

23 JEFFREY STEIMEL, Pretrial Services

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1 (Case called)

2 MR. MOORE: Good afternoon, your Honor, Julian Moore
3 for the government. With me at counsel table are my colleagues
4 of the USA, Lisa Baroni and Matthew Schwartz. Also present are
5 Special Agents Greg Hagarty and Paul Takla of the FBI. Jeff
6 Steimel of U.S. Pretrial Services is also with us.

7 THE COURT: Good afternoon, Mr. Moore, Ms. Baroni,
8 Mr. Schwartz, Agent Hagarty, Agent Takla, Officer Steimiel.

9 MR. ADELMAN: Good afternoon, your Honor, Martin
10 Adelman for Mr. Kugel. The other gentlemen will introduce
11 themselves.

12 THE COURT: Good afternoon, Mr. Adelman, and good
13 afternoon, Mr. Kugel.

14 MR. ZELENKO: Good afternoon, your Honor. Daniel
15 Zelenko and Michael Blumenthal, also appearing on behalf of
16 Mr. Kugel.

17 THE COURT: Good afternoon Mr. Zelenko and good
18 afternoon, Mr. Blumenthal, and good afternoon, everyone in
19 attendance.

20 I would just like to say, I understand there was a
21 little bit of a miscommunication with respect to the door
22 signage. I was conducting a trial in here this morning. As
23 you can see, it is a fairly small courtroom. The sign should
24 have said: Kugel on at 12:30, trial in progress, not abandon
25 hope ye who entered here. Forgive us. It was just a matter of

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1 not wanting to have a lot of unnecessarily disruptive activity
2 going on while the trial was going on. But I also assumed that
3 anyone who would have come in while the trial was going on
4 would not have been disruptive. Again, my apologies. There
5 was no meaning to offend. And I hope that none was taken.

6 It is my understanding that Mr. Kugel has an
7 application to waive indictment and enter a guilty plea to a
8 six-count superseding information which is labeled S4 10 Cr.
9 228.

10 Now, Mr. Adelman, would you be the principal one I
11 should speak to, or should it be Mr. Zelenko?

12 MR. ADELMAN: That's fine, yes, your Honor.

13 THE COURT: Mr. Adelman, is that correct?

14 MR. ADELMAN: Yes, ma'am, it is.

15 THE COURT: And the plea is pursuant to the agreement
16 that has been marked as Government Exhibit 1 and has been
17 executed and is at defense table. Is that correct?

18 MR. ADELMAN: Yes, it is, ma'am.

19 THE COURT: And an advice of rights form has also been
20 reviewed and executed and marked as Court Exhibit 1. Is that
21 correct?

22 MR. ADELMAN: Yes.

23 THE COURT: Now, I have a question for the government.
24 Mr. Moore, are you the principal one today?

25 MR. MOORE: Yes, today, your Honor.

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1 THE COURT: Would you make a statement regarding
2 victim notification in connection with this proceeding?

3 MR. MOORE: Yes, your Honor. As the Court is aware,
4 last week we reached out via a letter to the Court requesting
5 that today's proceeding be publicized. Your Honor so kindly
6 issued that order. And as of that date, which I believe was
7 Wednesday, December 16, we published on the U.S. Attorney's
8 Madoff website that today's proceeding would be conducted and
9 that Mr. Kugel, the defendant present in court today, would be
10 pleading pursuant to the S4 superseding indictment to the
11 counts that we will go through today.

12 THE COURT: Mr. Kugel, before I accept your waiver of
13 indictment and your guilty plea, there are a number of
14 questions that I must ask you while you are under oath to
15 assure that it is a valid waiver and plea. At times I may
16 cover a point more than once and I may cover matters that were
17 also addressed in the advice of rights form that you have seen.
18 But if I do so, that will be because it is very important that
19 you understand what is happening here today.

20 In that connection, if you don't understand something
21 that I ask you, please say so and I will reword the question or
22 you may speak with your attorney.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Ms. Ng, would you please administer the

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1 oath or affirmation.

2 (Defendant sworn)

3 THE COURT: Would you please state your full name for
4 the record.

5 THE DEFENDANT: David Louis Kugel.

6 THE COURT: Mr. Kugel, do you understand that you have
7 solemnly promised to tell the truth and that if you answer any
8 of my questions falsely, your false or untrue answers may later
9 be used against you in another prosecution for perjury or
10 making a false statement?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: You can be seated for the next portion of
13 the proceeding.

14 THE DEFENDANT: Thank you.

15 THE COURT: How old are you, sir?

16 THE DEFENDANT: 66.

17 THE COURT: And how far did you go in school?

18 THE DEFENDANT: I have a graduate -- undergraduate
19 degree.

20 THE COURT: In this particular field?

21 THE DEFENDANT: BBA in accounting, business
22 administration.

23 THE COURT: Since you finished your formal schooling,
24 what types of work have you done?

25 THE DEFENDANT: Brokerage firms, security work.

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1 THE COURT: Are you able to read, speak, and
2 understand English well?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Are you a citizen of the United States?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Are you now or have you recently been
7 under the care of a doctor or psychiatrist?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Are you under care for any condition that
10 affects your ability to think clearly?

11 THE DEFENDANT: I don't know, your Honor.

12 THE COURT: You don't know?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: Are you taking any medication that affects
15 your ability to think clearly?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Are you under treatment for any condition
18 or taking any medication that affects your judgment in terms of
19 making important decisions for yourself?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: In the past 24 hours have you taken any
22 drugs, medicine or pills or have you drunk any alcohol?

23 THE DEFENDANT: I have taken medicine, prescribed
24 medicine. No alcohol.

25 THE COURT: And have you taken the prescription

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1 medicine on the schedule prescribed and in the amount
2 prescribed?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Is your mind clear today?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Are you feeling well physically today?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Are you represented by counsel here today?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And who are your lawyers?

11 THE DEFENDANT: Martin Adelman, Dan Zelenko, and
12 Michael Blumenthal.

13 THE COURT: Messrs. Adelman, Zelenko and Blumenthal
14 and Mr. Moore, does any of you have any doubt as to Mr. Kugel's
15 competence to waive indictment and plead guilty at this time?

16 MR. MOORE: No, your Honor. And the government is
17 aware of Mr. Kugel's prescribed medication that he takes, as
18 indicated on page 3 of the pretrial services report.

19 THE COURT: Defense counsel.

20 MR. ADELMAN: The same answer, your Honor.

21 MR. ZELENKO: Same, your Honor.

22 MR. BLUMENTHAL: Same also, your Honor.

23 THE COURT: Mr. Kugel, your attorneys have informed me
24 that you wish to waive indictment and enter a guilty plea to an
25 information.

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1 Do you wish to waive indictment and plead guilty?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Have you fully discussed your case with
4 your attorneys, including the charges to which you intend to
5 plead guilty and any possible defenses to those charges?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Have you and your attorneys also discussed
8 the consequences of entering a guilty plea?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Are you satisfied with your attorneys and
11 their representation of you?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: On the basis of Mr. Kugel's responses to
14 my questions and my observations of his demeanor, I find that
15 he is fully competent to waive indictment and enter an informed
16 plea at this time.

17 Before I accept your plea, sir, I am going to ask you
18 some more questions. These questions are intended to satisfy
19 the Court that you wish to plead guilty because you are in fact
20 guilty and that you fully understand your rights and the
21 consequences of your plea.

22 Now, I will describe to you certain rights that you
23 have under the Constitution and laws of the United States. You
24 will be giving up these rights if you enter a guilty plea.
25 Please listen carefully. If you do not understand something

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1 that I'm saying or describing, stop me and I or your attorney
2 will explain it more fully.

3 Under the Constitution and laws of the United States,
4 you have the right to a speedy and public trial by a jury on
5 the charges against you that are in the information.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you understand that you have the right
9 to plead not guilty and to continue to plead not guilty?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: If there were a trial, you would be
12 presumed innocent and the government would be required to prove
13 you guilty by competent evidence and beyond a reasonable doubt.
14 You would not have to prove that you were innocent at trial.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: If there were a trial, a jury composed of
18 12 people selected from this district would have to agree
19 unanimously in order to find you guilty.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: If there were a trial and at all stages
23 leading up to it, you would have the right to be represented by
24 an attorney. And if you could not afford one, an attorney
25 would be provided to you free of cost.

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1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: If there were a trial, you would have the
4 right to see and hear all of the witnesses against you and your
5 attorney could cross-examine them. You would have the right to
6 have your attorney object to the government's evidence and
7 offer evidence on your behalf, if you so desired. You would
8 also have the right to have witnesses required to come to court
9 to testify in your defense, and you would have the right to
10 testify yourself, but you would not be required to testify.

11 Do you understand all that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that if there were a
14 trial and you decided not to testify, no adverse inference
15 could be drawn against you based on your decision not to
16 testify?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that if you were
19 convicted at a trial, you would have the right to appeal that
20 verdict?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand each and every one of
23 these rights that I have questioned you about?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you have any questions about any of

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1 these rights?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Do you understand that by pleading guilty
4 today you will be giving up each and every one of these rights,
5 that you will be waiving these rights?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you also understand that you will be
8 waiving any possible claim that your constitutional rights may
9 have been violated and that you will have no trial?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: One moment.

12 Ms. Baroni, do you need water?

13 MS. BARONI: That would be great, your Honor.

14 THE COURT: Ms. Ng.

15 MS. BARONI: Thank you, your Honor.

16 THE COURT: Mr. Kugel, do you understand that by
17 entering a plea of guilty you will also have to give up your
18 right not to incriminate yourself because I will ask you
19 questions about what you did in order to satisfy myself that
20 you are guilty as charged and you will have to admit and
21 acknowledge your guilt?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that you can change your
24 mind right now and refuse to enter a guilty plea. You do not
25 have to enter this plea if you do not want to, for any reason.

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1 Do you understand this fully?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And do you still wish to plead guilty?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: The document that contains the charges to
6 which you've indicated you wish to plead guilty is called an
7 information. It has been issued by the United States Attorney.
8 You have a constitutional right to be charged by an indictment
9 rather than an information. An indictment would be a charge
10 issued from a grand jury.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Mr. Adelman, would you please show
14 Mr. Kugel the waiver of indictment form.

15 MR. ADELMAN: I have done so, your Honor.

16 THE COURT: Thank you.

17 Mr. Kugel, have you signed this waiver of indictment
18 form?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Did you read it before you signed it?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Did you discuss it with your attorney
23 before you signed it?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Did you fully understand it before you

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1 signed it?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that if you do not waive
4 indictment, if the government wanted to prosecute you on these
5 particular charges that are in the information, the government
6 would have to present the charges to a grand jury, which might
7 or might not indict you on them?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that you are under no
10 obligation to waive indictment?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand that by waiving
13 indictment you are giving up your right to have the case
14 presented to a grand jury?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand what a grand jury is?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Did anyone promise you anything or
19 threaten you to get you to waive indictment?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Have you seen a copy of the fourth
22 superseding information? That's the charging instrument that
23 says S4 10 Cr. 228 at the top.

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Have you read it?

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1 THE DEFENDANT: Yes.

2 THE COURT: Have you discussed it with your attorney?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand the charges against you
5 that are detailed in the information?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: If you want me to, I'll read the
8 information out loud now here in court. Do you want me to read
9 it to you out loud?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: I find that Mr. Kugel's waiver of
12 indictment is knowing and voluntary. I accept it and I so
13 order it.

14 Mr. Kugel, do you understand that Count One of the
15 superseding information charges you with participating in a
16 conspiracy in violation of Title 18 of the United States Code,
17 Section 371 to commit securities fraud in violation of Title
18 15, Sections 78jb and 77ff, and 17, Code of Federal
19 Regulations, Section 250 10B-5. Also to falsify books and
20 records of a broker dealer in violation of Title 15, Sections
21 78qa and 78ff, and 17, Code of Federal Regulations, Section
22 240.17A-3, and also to falsify books and records of an
23 investment advisor, in violation of Title 15, United States
24 Code, Sections 80b-4 and 80b-17, and 17, Code of Federal
25 Regulations, Section 275.204-2?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that Count Two of the
3 superseding information charges you with conspiracy in
4 violation of Title 18, Section 371 to commit bank fraud in
5 violation of Title 18, Section 1344?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that Count Three of the
8 superseding information charges you with securities fraud in
9 violation of Title 15 Sections 78jb and 77ff, as well as 17,
10 CFR, Section 240.10B-5, and Title 18, U.S. Code, Section 2?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand that Count Four of the
13 superseding information charges you with falsifying books and
14 records of a broker dealer in violation of Title 15, Sections
15 78qa and 78ff, 17, Code of Federal Regulations, Section
16 240.17A-3, and Title 18, Section 2?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that Count Five of the
19 superseding information charges you with falsifying books and
20 records of an investment advisor in violation of Title 15, U.S.
21 Code, Sections 80b-4 and 80b-17, 17, CFR, Section 275.204-2 and
22 Title 18, U.S. Code, Section 2?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that Count Six of the
25 superseding information charges you with committing bank fraud

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1 in violation of Title 18, United States Code, Sections 1344 and
2 Title 18, United States Code, Section 2?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand that the government
5 would have to prove each and every part or element of each of
6 these charges beyond a reasonable doubt at trial if you did not
7 plead guilty?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Mr. Moore, would you please explain the
10 matters that the government would have to prove if we were to
11 go to trial on the charges in the fourth superseding
12 information?

13 MR. MOORE: Yes, your Honor.

14 With regard to Counts One and Two, the conspiracy
15 counts, in order to prove the crime of conspiracy, the
16 government must establish each of the following elements beyond
17 a reasonable doubt: First, that the conspiracy charged in the
18 information existed, in other words, that there was in fact an
19 agreement or understanding to violate the laws of the United
20 States; second, that the defendant knowingly, willingly and
21 voluntarily became a member of the conspiracy charged; and,
22 third, your Honor, that any one of the conspirators, not
23 necessarily the defendant, knowingly committed at least one
24 overt act in the Southern District of New York in furtherance
25 of the conspiracy during the life of the conspiracy.

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1 With regard to Count Three, your Honor, the securities
2 fraud count, to establish a violation of Section 10B as charged
3 in Count Three of the information, the government must prove
4 each of the following elements:

5 First, that in connection with the purchase or sale of
6 securities, the defendant did any one or more of the following:
7 One, employed a device, scheme, or artifice to defraud; or,
8 two, made an untrue statement of a material fact or omitted to
9 state a material fact which made what was said under the
10 circumstances misleading; or, three, engaged in an act,
11 practice, or course of business that operated or would operate
12 as a fraud or deceit upon a purchaser or seller.

13 Second, your Honor, that the defendant you are
14 considering acted knowingly, willfully, and with the intent to
15 defraud.

16 And, third, that the defendant used or caused to be
17 used any means or instruments of transportation or
18 communication in interstate commerce or the use of the mails in
19 furtherance of the fraudulent conduct.

20 With regard to Count Four, falsifying books and
21 records of a broker dealer: First, the government must prove
22 beyond a reasonable doubt that at the time of the alleged
23 offense, Bernard L. Madoff Investment Securities, which I'll
24 refer to during the rest of these proceedings as BLMIS, was a
25 registered broker dealer; second, that BLMIS failed to make and

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1 keep certain accurate records as required under the SEC's rules
2 and regulations; third, that the defendant aided and abetted
3 BLMIS' failure to make and keep accurate records; and, fourth,
4 that the defendant acted knowingly and willfully.

5 With regard to Count Five, falsifying books and
6 records of an investment advisor, in order to prove this crime
7 beyond a reasonable doubt the government must: First, prove
8 that at the time of the alleged offense, BLMIS was in fact an
9 investment advisor; second, that BLMIS failed to make and keep
10 certain accurate records as required under the SEC's rules and
11 regulations; third, that the defendant aided and abetted BLMIS'
12 failure to make and keep accurate records; fourth, that the
13 defendant acted knowingly and willfully; and, fifth, the
14 offense involved the use of the mails and means of
15 instrumentalities of interstate commerce.

16 Finally, with regard, your Honor, with regard to Count
17 Six, the bank fraud count, the government must prove beyond a
18 reasonable doubt that: First, that at the time of the alleged
19 offense, the defendant executed or attempted to execute a
20 scheme or artifice to defraud a bank or that the defendant
21 executed or attempted to execute a scheme or artifice to obtain
22 money owned by or under the control or custody of that bank by
23 means of false or fraudulent pretenses, representations, or
24 promises; second, that the defendant engaged in the scheme or
25 artifice knowingly and willfully and with the specific intent

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1 to defraud the bank; and, third, and finally, your Honor, that
2 the bank involved was a federally-insured chartered
3 institution.

4 THE COURT: Thank you, Mr. Moore.

5 Mr. Kugel, do you understand the matters that the
6 government would have to prove if you did not plead guilty?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you understand that the maximum
9 possible penalty for the crime charged in Count One of the
10 superseding information is five years of imprisonment, plus a
11 fine of the greatest of \$250,000, twice the gain resulting from
12 the offense or twice the loss to other people resulting from
13 the offense, plus a \$100 special assessment, plus full
14 restitution to all persons injured as a result of your criminal
15 conduct, plus three years of supervised release after your term
16 of imprisonment?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that the maximum
19 possible penalty for the crime charged in Count Two is five
20 years of imprisonment, plus a fine of the greatest of \$250,000,
21 twice the gain resulting from the offense, or twice the loss to
22 other people resulting from the offense, plus a \$100 special
23 assessment, plus full restitution to all persons injured as a
24 result of your criminal conduct, plus three years of supervised
25 release after your term of imprisonment?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that the maximum
3 possible penalty for the crime charged in Count Three is 20
4 years of imprisonment, plus a fine of the greatest of \$5
5 million, twice the gain resulting from the offense, or twice
6 the loss to other people resulting from the offense, plus a
7 \$100 special assessment, plus full restitution to all persons
8 injured as a result of your criminal conduct, plus three years
9 of supervised release after your term of imprisonment?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that the maximum
12 possible penalty for the crime charged in Count Four is 20
13 years of imprisonment, plus a fine of the greatest of \$5
14 million, twice the gain resulting from the offense, or twice
15 the loss to other people resulting from the offense, plus a
16 \$100 special assessment, plus full restitution to all persons
17 injured as a result of your criminal conduct, plus three years
18 of supervised release after your term of imprisonment?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that the maximum
21 possible penalty for the crime charged in Count Five is five
22 years of imprisonment, plus a fine of the greatest of \$250,000,
23 twice the gain resulting from the offense or twice the loss to
24 other people resulting from the offense, plus a \$100 special
25 assessment, plus full restitution to all persons injured as a

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1 result of your criminal conduct, plus three years of supervised
2 release after your terms of imprisonment?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand that the maximum
5 possible penalty for the crime charged in Count Six is 30 years
6 of imprisonment, plus a fine of the greatest of \$1 million,
7 twice the gain resulting from the offense, or twice the loss to
8 other people resulting from the offense, plus a \$100 special
9 assessment, plus full restitution to all persons injured as a
10 result of your criminal conduct, plus five years of supervised
11 release after your term of imprisonment?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And do you understand that the maximum
14 possible combined penalty for the six crimes to which you
15 propose to plead guilty is 85 years of imprisonment, plus a
16 fine of \$11,750,000 or, if greater, the sums of the relevant
17 gains, losses, and statutory amounts relating to your offenses,
18 plus full restitution to all persons injured by your criminal
19 conduct, plus a \$600 mandatory special assessment, plus
20 supervised release for five years after your term of
21 imprisonment?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: I will now give you some information and
24 verify your understanding of the supervised release aspect of
25 the potential penalty. Supervised release means that you will

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1 be subject to monitoring when you are released from prison.
2 Terms and conditions will be imposed. If you violate any of
3 the set terms and conditions, you can be reimprisoned without a
4 jury trial. If you are on supervised release and you do not
5 comply with any of the set terms or conditions, you can be
6 returned to prison for the remainder of the term of supervised
7 release. You will be given no credit for the time that you
8 served in prison as a result of your sentence and no credit for
9 any time spent on postrelease supervision. For example, if you
10 received a prison term and then a three-year term of supervised
11 release and after you left prison you lived up to the terms of
12 supervised release for two years, but then you violated some
13 term of the supervised release, you could be returned to prison
14 for three whole years.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you also understand that if I accept
18 your guilty plea and adjudge you guilty, that adjudication may
19 deprive you of valuable civil rights, such as the right to
20 vote, the right to hold public office, the right to serve on a
21 jury, and the right to possess any kind of firearm if you
22 currently have or otherwise contain such rights?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that there are
25 sentencing guidelines that the Court must consider in

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1 determining your sentence?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Has your attorney discussed the sentencing
4 guidelines with you?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand that in determining your
7 sentence the Court has an obligation to calculate the
8 applicable sentencing guideline range and must consider that
9 range, possible departures under the sentencing guidelines, and
10 other sentencing factors under the statute we referred to as
11 Section 3553(a)?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that if your attorney or
14 anyone else has attempted to estimate or predict what your
15 sentence will be, their estimate or prediction could be wrong?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you also fully understand that even if
18 your sentence is different from what your attorney or anyone
19 else told you it might be, or if it is different from what you
20 expect, you will still be bound to your guilty plea and you
21 will not be allowed to withdraw your guilty plea?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that the sentence to be
24 imposed will be determined solely by the Court and that I can
25 only determine the sentence to be imposed after the probation

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1 department prepares a presentence report?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that the Court has
4 discretion while taking into account the specific provisions
5 and policy statements in the guidelines to sentence you to any
6 number of years of imprisonment between zero and the combined
7 statutory maximums of 85 years?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Are you now serving any state or federal
10 sentence or are you being prosecuted for any other crime?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Do you understand that the superseding
13 information also includes a forfeiture allegation in which the
14 government asserts that you are required to forfeit to the
15 United States any and all property constituting or derived from
16 any proceeds that you obtained as a result of the crimes
17 charged in Counts One, Two, Three, Four, and Six, as well as
18 any and all property traceable to such property, including but
19 not limited to a sum of money representing the amount of
20 proceeds obtained as a result of said offenses, totaling
21 approximately \$3,585,000 as to each of Counts Two and Six, and
22 \$170 billion as to Counts one, Three, and Four?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Mr. Adelman, would you please show
25 Mr. Kugel the agreement which has been marked as Government

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1 Exhibit 1.

2 MR. ADELMAN: I have done so, your Honor.

3 THE COURT: Thank you.

4 Mr. Kugel, have you signed this agreement?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Did you read it before you signed it?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Did you discuss it with your attorney
9 before you signed it?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Did you fully understand the agreement
12 before you signed it?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Does the agreement reflect accurately your
15 complete and total understanding of the entire agreement
16 between the government, your attorney, and you?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Is everything that you understand about
19 your plea, cooperation, and sentence covered in this agreement?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Has anything been left out?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Has anyone made any promises to you other
24 than what's written in that agreement or threatened you or
25 forced you to plead guilty or to enter into the cooperation

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1 agreement?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Do you understand that even if the
4 government does not oppose or take a position on what your
5 attorney will ask as a sentence, I am free to impose whatever
6 sentence I believe is appropriate under the circumstances and
7 the applicable law, and you will have no right to withdraw your
8 plea?

9 THE DEFENDANT: Yes, your Honor.

10 (Continued on next page)

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1 THE COURT: Do you understand that the agreement
2 provides that you must cooperate fully with the office of the
3 United States Attorney, the Federal Bureau of Investigation,
4 and any other law enforcement agency designated by the United
5 States Attorney?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that the agreement does
8 not bind any federal, state, or local prosecuting authority
9 other than the United States Attorney?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that the agreement
12 provides that if the United States Attorney determines that you
13 have provided substantial assistance in the investigation or
14 prosecution and if you have fully complied with the
15 understandings specified in the agreement, the United States
16 Attorney will file a motion, pursuant to Section 5K1.1 of the
17 Sentencing Guidelines, requesting that the Court sentence in
18 light of the factors set forth in Section 5K5.1(a)?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that the factors that
21 the Court may consider in this connection include the
22 significance and usefulness of your assistance, taking into
23 account the government's evaluation of your assistance, the
24 truthfulness, completeness and reliability of any information
25 or testimony you provided, the nature and extent of your

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1 assistance, any injuries suffered or any danger or risk of
2 injury to you or to your family as a result of your assistance,
3 and the timeliness of your assistance? Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that even if the United
6 States Attorney files such a motion, the sentence to be imposed
7 on you remains within the sole discretion of the Court?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that you will not be
10 entitled to withdraw your guilty plea even if the Court denies
11 the government's motion?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that if the United
14 States Attorney determines that you have not provided
15 substantial assistance in an investigation or prosecution, or
16 that you have violated any provision of the agreement, the
17 United States Attorney is not obliged to file a motion under
18 Section 5K1.1 of the Sentencing Guidelines?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that you will not be
21 entitled to withdraw your guilty plea even if the United States
22 Attorney does not file the motion?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that your agreement
25 provides that if you commit any further crimes, or if it is

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1 determined that you gave false, incomplete, or misleading
2 testimony or information, or otherwise violated any provision
3 of the agreement, you will be subject to prosecution for any
4 federal violations of which the United States Attorney has
5 knowledge, including perjury and obstruction of justice?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that your agreement
8 provides that if you commit any further crimes, or if it is
9 determined that you gave false, incomplete or misleading
10 testimony or information, or otherwise violated any provision
11 of the cooperation agreement, all statements made by you to the
12 United States Attorney or other designated law enforcement
13 agents and any testimony given by you before a grand jury or
14 other tribunal may be admissible in evidence in any criminal
15 proceedings against you?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that your agreement also
18 provides that you may not assert a claim that such statements
19 should be suppressed from evidence and that you have waived
20 your right to claim that such statements should be suppressed?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand that page 3 of the plea
23 agreement includes your agreement to forfeit to the United
24 States any and all property constituting and derived from any
25 proceeds that you obtained as a result of the unlawful

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1 activities charged in Counts One, Three and Four of the
2 Superseding Information, including, but not limited to, a sum
3 equal to \$170 billion, and also to forfeit any and all property
4 constituting and derived from any proceeds that you obtained as
5 a result of the unlawful activities charged in Counts Two and
6 Six of the Information, including, but not limited to, a sum of
7 money equal to \$3,585,000 as to each count, as well as your
8 right, title and interest in the specific property identified
9 in the agreement?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that you are
12 specifically agreeing that the amount to be forfeited includes,
13 but is not limited to, a sum of money equal to \$170,007,175,000
14 in United States currency as well as the specific property and
15 that a judgment will be entered against you for at least that
16 amount?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that you are not
19 obligated to admit the forfeiture allegation?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that you are not obliged
22 to agree to the forfeiture amount with the government?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And do you understand that it is up to the
25 Court to make a final determination as to forfeiture?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that any amount that you
3 do forfeit will not be credited toward any fines, restitution,
4 cost of imprisonment, or other additional penalty that the
5 court may impose on you?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you still wish to plead guilty pursuant
8 to this agreement?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Mr. Adelman, do you know of any valid
11 reason why Mr. Kugel would prevail at trial?

12 MR. ADELMAN: I do not, your Honor.

13 THE COURT: Do you know of any reason why he should
14 not be permitted to plead guilty?

15 MR. ADELMAN: I do not.

16 THE COURT: Mr. Kugel, would you please stand now and
17 tell me what you did that makes you guilty of the six crimes
18 charged in the Fourth Superseding Information?

19 THE DEFENDANT: Yes, your Honor.

20 Your Honor, I stand before you ready to plead guilty
21 to the six counts in the Information filed against me, and to
22 accept responsibility for what I have done. I am deeply sorry
23 for my actions and the harm suffered by the victims. I want
24 the Court and everyone to know that I will do all I can to
25 cooperate with the government.

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1 As to Counts One, Three, Four and Five, I provided
2 historical trade information to other BLMIS employees, which
3 was used to create false, profitable trades in the Investment
4 Advisory clients' accounts at BLMIS. Specifically, beginning
5 the early '70s, until the collapse of BLMIS in December 2008, I
6 helped create fake, backdated trades. I provided historical
7 trade information -- sorry -- first to Annette Bongiorno, and
8 later to Joanne Crupi, and others which enabled them to create
9 fake trades that, when included on the account statements and
10 trade confirmations of Investment Advisory clients, gave the
11 appearance of profitable trading when in fact no trading had
12 actually occurred. I helped Bongiorno, Crupi and others create
13 these fake, backdated trades based on historical stock prices
14 and were executed only on paper.

15 Many of these false trades were based on trades that
16 previously had been used in the Proprietary Trading operations
17 at BLMIS. I was aware that the trades would be reported to
18 BLMIS customers on their monthly statements and trade
19 confirmations, and that the information was false.

20 I did this at the Madoff offices in Manhattan and
21 known that many of the account statements and trade
22 confirmations were mailed to clients from the offices in
23 Manhattan.

24 I therefore plead guilty to the crimes alleged against
25 me in Count One, Three, Four and Five. I did conspire with

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1 other BLMIS employees to commit these crimes and, in fact, they
2 were committed, in violation of the law.

3 Finally, as to Count Two and Six, I acknowledge that
4 from at least from 2002 through 2007, on several occasions, I
5 caused false financial information to be submitted to various
6 financial institutions on my behalf and on behalf of other
7 potential borrowers. The false financial information was
8 submitted in connection for applications for mortgage loans.

9 I asked Joann Crupi to prepare documents that did not
10 accurately reflect my assets and the assets of others at BLMIS
11 and she did so. Those documents overstated the total value of
12 my own and the other potential borrowers' holdings in accounts
13 at BLMIS. These fake documents were submitted to financial
14 institutions on my behalf and on behalf of other potential
15 borrowers.

16 The false documents were prepared at BLMIS offices in
17 Manhattan and submitted to federally-insured lenders by U.S.
18 mail or wire transmissions.

19 THE COURT: Thank you. I have a couple of questions
20 for you.

21 You used the term "conspired" in relation to Counts
22 One, Three, Four and Five. What do you mean by that?

23 THE DEFENDANT: When I conspired, I worked together
24 with them to create the false trades that appeared on the
25 Investment Advisory clients' statements and confirmations,

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1 pursuant to agreement and understanding.

2 THE COURT: You had an agreement and understanding
3 with the other individuals you mentioned in order to create the
4 false trades?

5 THE DEFENDANT: That applied to historical
6 information, yes.

7 THE COURT: And you said that the customer information
8 regarding the false trades was mailed in the regular Postal
9 system, is that correct?

10 THE DEFENDANT: To the best of my knowledge, yes.

11 THE COURT: And the financial institutions to which
12 the false mortgage information, application information, was
13 given were banks; is that your understanding?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Is it your understanding that they were
16 federally-insured banks?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And when you were dealing with the false
19 trading history information and the false financial
20 information, did you know that that information was false?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And did you know that what you were doing
23 was wrong and unlawful?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Does the government have any further

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1 requests for factual matters to be addressed in Mr. Kugel's
2 plea allocution?

3 MR. MOORE: No. Thank you, your Honor.

4 THE COURT: Mr. Adelman -- actually, before we do
5 that, Mr. Moore, would you please summarize the government's
6 evidence against Mr. Kugel?

7 MR. MOORE: Certainly, your Honor.

8 Had this case proceeded to trial --

9 THE COURT: You will have to get up again in a minute
10 but it is your choice.

11 MR. MOORE: My apologies, your Honor.

12 Had this case proceeded to trial, the government would
13 have proven through testimony and evidence beyond a reasonable
14 doubt the facts set forth in the Superseding Information.

15 Specifically, the government would have proven, with
16 respect to Counts One, Three, Four and Five of the Information,
17 that Mr. Kugel was employed at the Bernard L. Madoff Investment
18 Securities LLC, or "BLMIS," from in or about 1970 through at
19 least on or about December 11, 2008. BLMIS was both an
20 investment advisor and a market maker, your Honor.

21 Beginning in or about the 1970s, Kugel was a trader in
22 BLMIS's Proprietary Trading and Market Making operations. In
23 or about the late 1990s, your Honor, Mr. Kugel assumed a
24 managerial position on the trading floor and later took on the
25 role of Trading Floor Compliance Analyst. Beginning in or

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1 about the early 1970s until the collapse of BLMIS in 2008,
2 Mr. Kugel helped create fake, backdated trades for Mr. Madoff's
3 Investment Advisory, or the "IA," business with his
4 codefendants, Annette Bongiorno, Joann Crupi, as well as other
5 individuals, your Honor. These fake, backdated trades -- many
6 of which mimicked actual trades executed in connection with the
7 Proprietary Trading operation -- were used to deceive the
8 clients of the IA business and to give the appearance that
9 actual trading occurred when, as Mr. Kugel and others well
10 knew, no trading occurred at all in the IA account.

11 Beginning in or about the early 1970s, Bongiorno
12 requested from Kugel backdated arbitrage trades to be used in
13 Investment Advisory clients' accounts. On a regular basis,
14 when the IA business had received money that was to be
15 invested, Bongiorno told Kugel the amount of funds that she had
16 available to purportedly invest on behalf of IA clients, which
17 was typically in the millions of dollars. In response,
18 Mr. Kugel provided Bongiorno historical information from which
19 she created the fake trades. Specifically, Mr. Kugel, using
20 historical stock prices from the Wall Street Journal and other
21 sources, he provided Bongiorno with the name of the stocks, the
22 buy and sell dates of potential trades, as well as the
23 historical price ranges of those stocks of the respective dates
24 that she could use to make a profit. Often, this information
25 mimicked trades previously executed in connection with limited

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1 Proprietary Trading operation.

2 Mr. Kugel also gave Ms. Bongiorno the total volume of
3 shares traded in particular stocks on certain dates so she
4 would not exceed a particular stock's daily trading volume when
5 creating the fake trades. Using the information provide to her
6 by Kugel, Bongiorno then selected the particular stocks and
7 historical purchase prices from the price ranges given to her
8 by Mr. Kugel. Bongiorno selected different stocks and purchase
9 prices to be used for each IA client in order to meet the rate
10 of return predetermined by Madoff for that client. In doing
11 so, Ms. Bongiorno calculated the number of shares that would
12 have to be used in each IA client's account, based on both the
13 amount of money the client had available to invest and the
14 predetermined rate of return for each client as determined by
15 Madoff.

16 Beginning in or about the early 1990s, Mr. Kugel
17 similarly provided Ms. Crupi with historical price information
18 to enable Crupi to create false, backdated arbitrage trades for
19 IA clients. Using the information provide by Kugel, Crupi then
20 selected the particular stock and historical purchase prices to
21 be used for each IA client in order to meet the rate of return
22 predetermined by Madoff for that client. In doing so, Crupi
23 calculated the number of shares that would have to be used in
24 each IA client's account based on both the amount of money the
25 client had to invest and the rate of return predetermined by

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1 Madoff.

2 In or about the mid-1990s, your Honor, Crupi took over
3 the role of Kugel in selecting the historical information
4 needed for the fake arbitrage deals. In doing so, Crupi
5 selected the name of the stocks, the buy and sell date of a
6 potential trade, as well as the historical price range for that
7 date that she could use to make a profit. Crupi then created
8 fake, backdated arbitrage trades that were executed on paper
9 only in the IA clients' accounts.

10 With respect to Counts Two and Six, your Honor, the
11 government would have proven that, separate and apart from the
12 fake trades that Kugel, Bongiorno, Crupi, and others created at
13 BLMIS, Kugel, with the assistance of Ms. Crupi and others, also
14 defrauded numerous financial institutions in order to obtain
15 loans using artificially-inflated financial information. On
16 multiple occasions, Mr. Kugel and Crupi submitted false and
17 misleading information concerning Kugel's assets and the assets
18 of others to financial institutions in order to obtain loans
19 for the purchase and construction of homes for Kugel and
20 others. With the assistance of Crupi and others, Kugel and
21 others obtained multiple million-dollar loans based on the
22 submission of this fraudulent information.

23 THE COURT: Thank you.

24 Mr. Kugel, how do you now plead to the charge against
25 you in Count One of the Fourth Superseding Information, not

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1 guilty or guilty?

2 THE DEFENDANT: Guilty, your Honor.

3 THE COURT: How do you now plead to the charge against
4 you in Count Two, not guilty or guilty?

5 THE DEFENDANT: Guilty, your Honor.

6 THE COURT: How do you now plead to the charge against
7 you in Count Three, not guilty or guilty?

8 THE DEFENDANT: Guilty, your Honor.

9 THE COURT: How do you now plead to the charge against
10 you in Count Four, not guilty or guilty?

11 THE DEFENDANT: Guilty, your Honor.

12 THE COURT: How do you now plead to the charge against
13 you in Count Five, not guilty or guilty?

14 THE DEFENDANT: Guilty, your Honor.

15 THE COURT: And how do you now plead to the charge
16 against you in Count Six, not guilty or guilty?

17 THE DEFENDANT: Guilty, your Honor.

18 THE COURT: Are you pleading guilty to each of these
19 charges because you are in fact guilty of each of these
20 charges?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Are you pleading guilty voluntarily and of
23 your own free will?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Mr. Adelman, would you please show

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1 Mr. Kugel Court Exhibit 1, the advice of rights form.

2 MR. ADELMAN: I have done so, your Honor.

3 THE COURT: Thank you.

4 Mr. Kugel, have you signed this form?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Did you read it before you signed it?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Did you understand it before you signed
9 it?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Did you discuss it with your attorney
12 before you signed it?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Mr. Adelman, did you also review and sign
15 Court Exhibit 1?

16 MR. ADELMAN: Yes, your Honor.

17 THE COURT: Mr. Adelman, are there any other questions
18 that you believe I should ask Mr. Kugel in connection with his
19 plea?

20 MR. ADELMAN: No, ma'am.

21 THE COURT: Mr. Moore, are there any other questions
22 that you believe I should ask Mr. Kugel in connection with his
23 plea?

24 MR. MOORE: No. Thank you, your Honor.

25 THE COURT: Mr. Kugel, you have acknowledged that you

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1 are guilty as charged in the Information. I find that you know
2 your rights and that you are waiving them voluntarily.

3 Because your plea is entered knowingly and voluntarily
4 and is supported by an independent basis in fact, containing
5 each of the essential elements of each of the offenses, I
6 accept your guilty plea and I adjudge you guilty of the
7 offenses charged in Counts One, Two, Three, Four, Five and Six
8 of the Fourth Superseding Information, to which you have pled
9 guilty.

10 You can be seated now. Thank you.

11 Mr. Adelman, do you wish to be present for any
12 interview of Mr. Kugel in connection with the preparation of
13 the presentence report?

14 MR. ADELMAN: Yes, ma'am.

15 THE COURT: I will make that direction.

16 MR. ADELMAN: Thank you.

17 THE COURT: Do the parties have a particular request
18 with respect to the setting of a sentencing date?

19 MR. MOORE: Your Honor, the government requests a
20 sentencing control date for six months from now and that a
21 presentence report not be ordered at this time.

22 THE COURT: Ms. Ng, may I have a date, please?

23 THE CLERK: Friday, May 4th, 2012, at 11 a.m.

24 THE COURT: May 4th at 11 a.m.?

25 THE CLERK: Yes.

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1 THE COURT: The sentencing control date is set for
2 May 4th at 11 a.m.

3 Will the government inform the Court and the defense
4 at such time that it believes that it is appropriate to prepare
5 a presentence report?

6 MR. MOORE: We will, your Honor.

7 THE COURT: Thank you.

8 Counsel, when it does come time for sentencing, please
9 be certain to give any comments or objections promptly to the
10 Probation Office, and to make your sentencing submissions in a
11 manner consistent with my sentencing submission procedures,
12 which are posted on the court's website and they are also
13 available here in hard copy.

14 Mr. Kugel, at some point the Probation Office will be
15 preparing a presentence report to assist me in sentencing you.
16 You will be interviewed by the Probation Office. It is
17 important that the information that you give to the probation
18 officer be truthful and accurate. The report is important in
19 what my decision is as to what your sentence will be.

20 You and your attorney have the right and will have an
21 opportunity to examine the report, to challenge or comment on
22 it, and to speak on your behalf before sentencing. Failing to
23 be truthful with the Probation Office and the Court may have an
24 adverse effect on your sentence and may subject you to
25 prosecution.

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1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Now, I understand that there is a --
4 actually, we need to deal with bail conditions, and we also
5 need to deal with the documents that I have been given relating
6 to forfeiture.

7 Is it the parties' request that I sign today the
8 Preliminary Order of Forfeiture and also the Stipulation and
9 Order relating to forfeiture issues?

10 MR. MOORE: Yes, your Honor. Thank you.

11 THE COURT: Any objection from the defense?

12 MR. BLUMENTHAL: No, your Honor.

13 THE COURT: And am I to sign the full and redacted
14 copy?

15 MR. SCHWARTZ: Yes, your Honor. Of course, we ask
16 that only the redacted versions be docketed.

17 THE COURT: Yes. And that the full version be filed
18 under seal?

19 MR. SCHWARTZ: Please, yes. The redactions are in
20 accordance with the court's local rules.

21 THE COURT: So relating to the privacy rules.

22 MR. SCHWARTZ: Correct. It is financial accountant
23 information and the names of minors.

24 THE COURT: Thank you.

25 (Pause)

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1 Ms. Ng will take care of the entry of those orders.

2 I have reviewed the Pretrial Services' report. Do the
3 parties have a joint application and recommendation with
4 respect to bail pending sentencing?

5 MR. MOORE: Yes, your Honor.

6 In light of Mr. Kugel's cooperation, his full
7 disclosure of his financial assets and his dealings that limits
8 to the government, we are satisfied that he will follow the
9 rules set forth by Pretrial Services in accordance with the
10 proposed bail package we are prepared to present to the Court
11 at this time.

12 Namely, we respectfully submit to you, your Honor,
13 that the defendant's bail be set at a \$3 million personal
14 recognizance bond to be secured by six financially-responsible
15 persons and \$900,000 in cash or property. This property will,
16 of course, have to be clean assets, wholly unaffiliated with
17 BLMIS.

18 We further request that the defendant be subject to
19 strict pretrial supervision, and that his travel be restricted
20 to the Southern District of New York, the Eastern District of
21 New York and the District of New Jersey.

22 We further request that he surrender all of his travel
23 documents and make no new travel applications. We ask that
24 this restriction also apply to his wife. In light of the
25 holiday this week, your Honor, we request that the defendant

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1 have until Thursday, December 1st, to meet these conditions.

2 To date, the government has already met with a number
3 of the defendant's proposed suriters and has been satisfied
4 with their financial and personal qualifications. These
5 persons include close family members and friends of the
6 defendant who have known him for decades and present strong
7 moral suasion over the defendant to follow the conditions of
8 his release.

9 The defendant has been working with our office and the
10 FBI for quite some time now, your Honor. During this time he
11 has been both been reliable, timely in making his appointments,
12 and flexible with his schedule when the government requested
13 meetings with him.

14 The defendant is a long-time resident on Long Island,
15 and his family resides in that district, in the Southern
16 District of New York and the District of New Jersey. Moreover,
17 your Honor, the defendant currently helps assist his elderly
18 mother with her care, and that includes bringing her to visit
19 his brother, who resides in the District of New Jersey.
20 Currently, this is his primary job responsibility.

21 As part of the cooperation process, your Honor, the
22 defendant has filled out financial affidavits and worked with
23 our Asset Forfeiture Unit at the U.S. Attorney's Office,
24 detailing the amounts and whereabouts of all of his assets. He
25 has worked closely with Mr. Schwartz in that regard, and has

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1 fully accepted the fact that he must forfeit the vast majority
2 of his assets.

3 As your Honor is aware, and I believe as the Court has
4 issued today or will be issuing shortly, our Asset Forfeiture
5 unit has presented forfeiture papers for your review in which
6 the defendant has agreed to a forfeiture amount of over \$170
7 billion. And as part of that forfeiture, your Honor, the
8 defendant has agreed to give up his home, luxury vehicle,
9 monies maintained in several financial institutions, and other
10 specific assets detailed in the papers before your Honor.

11 The government does not believe the defendant is a
12 danger to the community.

13 For all of these reasons, your Honor, the government
14 believes that the proposed bail package is reasonable and
15 appropriate in this case for this individual defendant.

16 THE COURT: And the government believes, I take it,
17 based on its thorough review of the financial situation and its
18 dealings with Mr. Kugel over a lengthy period of time, that the
19 evidence is clear and convincing that the package that has been
20 proposed, including the delayed satisfaction of all of the
21 particulars of the package, is sufficient to address the
22 societal interests in proper appearance for proceedings in this
23 case and protection of the public?

24 MR. MOORE: We do, your Honor.

25 THE COURT: Thank you.

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1 Did Pretrial Services wish to be heard further on
2 this?

3 MR. STEIMEL: No, your Honor. We stand by our report.

4 THE COURT: Thank you.

5 And the defense has no objection to the set of
6 conditions?

7 MR. ADELMAN: No, ma'am. I was just going to endorse
8 them by pointing out that Mr. Kugel, aside from these financial
9 considerations, is closely tied to his family, all of whom are
10 here in New York. His brother and sister are going to be
11 suriters. The brother is a dentist in New Jersey.

12 He is in contact with his aged mother on a frequent
13 basis. His goal is to help her when she needs help. His
14 daughter and son are here. His grandchildren are here. He has
15 no connections anywhere else in the world. I have the
16 passports of Mr. and Mrs. Kugel with me to surrender to the
17 court. And I endorse the proposal that has been made.

18 Your Honor doesn't have to hear this now, and I
19 apologize. At some point in time I will be requesting travel
20 permission for Mr. Kugel to go to Florida. He has a piece of
21 real estate, a house there, that he is obliged to sell to raise
22 funds for the forfeiture. He is going to be the one selling
23 it, not the government, and he has his personal property there.
24 So I will be in communication with your Honor to ask for such a
25 trip, and I expect you will remember what I just told you today

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1 in ruling on the application.

2 THE COURT: I have listened carefully to what you just
3 told me. I would simply ask that you speak -- before you make
4 the communication to my chambers, that you verify that there is
5 no objection to it from the government, from the Probation
6 Department, and that you write a letter reciting those
7 communications and the positions of those two aspects of the
8 institution.

9 MR. ADELMAN: Yes, your Honor.

10 THE COURT: All right, then.

11 I am going to prepare a bail disposition sheet. I'm
12 sorry.

13 MR. STEIMEL: Your Honor, I'm sorry --

14 THE COURT: It is Pretrial Services, not Probation?

15 MR. STEIMEL: Yes, your Honor.

16 Just one clarification. I know that defense counsel
17 indicated that the wife's passport was also going to be ordered
18 seized or surrendered to Pretrial Services. I was not clear
19 actually -- I'm not sure if I heard you say whether the wife's
20 passport was also supposed to be surrendered. Did you order
21 that?

22 THE COURT: I am going to. It was in the list of
23 conditions that -- I'm sorry, am I interrupting you?

24 MR. MOORE: No. I'm just saying you hadn't issued
25 your decision yet.

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1 THE COURT: It was part of the package as described by
2 Mr. Moore.

3 And so what I was about to say was that I find, based
4 on the review of the Pretrial Services' report and all of the
5 representations that have been made to the Court, that the
6 package as proposed is appropriate and sufficient to address
7 the statutory concerns of appearance and protection of the
8 community. Accordingly, I will approve release pending
9 sentencing on the basis of these conditions.

10 Now I am going to prepare a bail disposition sheet on
11 which I will summarize the conditions. I will read out to make
12 sure that everyone agrees that I have reflected the appropriate
13 conditions. So if you will bear with me, I will do that.

14 MR. ADELMAN: Your Honor, may I have a moment to
15 consult with my brother and sister here?

16 THE COURT: Yes, you may.

17 MR. ADELMAN: Thank you.

18 (Pause)

19 THE COURT: This is what I have written.

20 \$3 million PRB with six FRPs; 900,000 security in cash
21 and property (not derived from BLMIS or any activity that is
22 the subject of the charges); strict supervision; travel
23 restricted to S.D.N.Y., EDNY, DNJ; surrender passports of
24 defendant and spouse, and no new applications. All conditions
25 must be met by December 1, 2011.

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1 Does that cover it?

2 MR. MOORE: Yes, your Honor.

3 MR. ADELMAN: Yes, your Honor. The only -- I don't
4 anticipate him not being compliant by December 1, but if there
5 is one piece that is missing or it will come in the next day, I
6 will come back to your Honor and advise.

7 THE COURT: Yes. If you need to, you can make an
8 application for an extension of the deadline, but this is the
9 deadline that I am putting in today.

10 MR. ADELMAN: Yes.

11 THE COURT: All right. Let me print the copies.

12 (Pause)

13 THE COURT: Mr. Kugel.

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Did you hear the conditions that I had set
16 for your bail?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that you must comply
19 strictly with all of those conditions, and that the violation
20 of any of those conditions may result in the issuance of a
21 warrant for your arrest, the revocation of your release, or
22 other sanctions?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: The Pretrial Services Department will be
25 going over the details of all of the conditions with you.

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1 Counsel, is there anything further that we need to
2 address together this afternoon?

3 MR. MOORE: Nothing from the government, your Honor.

4 MR. ADELMAN: Nor from the defense.

5 THE COURT: All right. Thank you. We are all
6 adjourned.

7 MR. MOORE: Thank you, your Honor.

8 MS. BARONI: Thank you, your Honor.

9 THE CLERK: All rise.

I (We) hereby certify that the foregoing
is a true and accurate transcript, to the best
of my (our) skill and ability, from my (our)
stenographic notes of this proceeding.

Vincent J. Bilogus
Official Court Reporter
U.S. District Court